



**Testimony before the District of Columbia Council
Committee on Education
June 19, 2014**

**Public Hearing:
Special Education Student Rights Act of 2014 (B20-723)
Enhanced Special Education Services Act of 2014 (B20-724)
Special Education Quality Improvement Act of 2014 (B20-725)**

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Good morning Chairman Catania and members of the Committee. My name is Judith Sandalow. I am the Executive Director of Children's Law Center¹ and a resident of the District. I am testifying today on behalf of Children's Law Center, the largest non-profit legal services organization in the District and the only devoted to a full spectrum of children's issues. Last year, we provided services to more than 5,000 low-income children and families, with a focus on abused and neglected children and on those with special health and educational needs. Nearly all the children we represent attend DC public schools – whether traditional public schools, charter schools, or nonpublic special education schools funded by DC.

Introduction

I am delighted to testify this morning in strong support of the Special Education Students Rights Act of 2014, the Enhanced Special Education Services Act of 2014, and the Special Education Quality Improvement Act of 2014. Last fall, I testified before this Committee that special education in the District of Columbia was in a state of crisis. That continues to be the case. Although the education agencies have worked diligently in recent years to reinforce the foundations of the special education system, the outcomes for children with disabilities continue to be shockingly poor:

- Two out of every three DC special education students fail to graduate on time with a high school diploma.²

- Three out of every four DC special education students are not proficient in math.³
- Four out of every five DC special education students are not proficient in reading.⁴

We have failed these children for far too long.

The three bills that you have put forward, Mr. Catania, are the first comprehensive special education reform legislation ever proposed in the District of Columbia to address this crisis. They represent an unprecedented collaboration between the Committee on Education and more than 25 local advocacy groups and parents. They will lead to significant improvements in the education and life outcomes of the over 13,000 DC students whose disabilities impact their education.⁵

Before I delve into the details of these bills, I'd like to turn the microphone over to several parents. As you will hear, they are caring and attentive advocates, but nonetheless were only able to secure an appropriate education for their children after turning to Children's Law Center for help.

As you heard in their testimony, each parent strongly supports this legislation. These bills are designed to fix the most pressing problems that families like them face. The bills grew out of months of collaboration between Children's Law Center, the Committee on Education, and over 25 community advocacy groups. Our staff and the committee staff spent countless hours listening – listening to parents, listening to

students, listening to advocates, and listening to school personnel. We at Children's Law Center drew on our experience representing tens of thousands of DC children over the past 17 years. And I understand that the education committee was informed by the many DC parents who call the committee every day to share their concerns about their children's education. Because there has been such deep and thoughtful community input, I am proud to be able to say that these bills truly represent the voice of DC parents.

In addition, the bills represent best practices around the country. Both Children's Law Center and the committee staff conducted extensive research to make sure that each proposal was supported by evidence. As part of that process, we spoke with parent advocates in a number of the states that have already adopted some of the provisions included in these bills, including California, Connecticut, Delaware, Illinois, Massachusetts, New Hampshire, New Jersey, and New York.

The reforms that these bills make to DC's special education system span the process from beginning to end. Thanks to these bills, students will receive assistance earlier, parents will be able to participate more fully in their children's education, and students will graduate from high school with the skills they need to be successful adults.

I do want to acknowledge that the reforms proposed in these bills are achievable today because of the major investments that the education agencies have made in the

basic infrastructure of special education in the District. Several years ago, schools often did not know what special education services they were supposed to provide to a new student. Now, electronic data systems convey that information to schools in a timely way. Several years ago, it was common for students to miss school because of transportation failure. Now, that is rare. Several years ago, the due process hearing office was plagued by delays and hearing officers' decisions often went unimplemented. Now, hearings are generally on time and hearing officers' decisions are usually implemented. However, these infrastructure improvements have not yet led to comparable improvements in students' educational experiences. The bills that are the subject of this hearing are designed to take this next step, building on DC's accomplishments so far.

While each provision of the bills is important, I will focus today on the ones that are poised to have the biggest impact.

Early Intervention

Brain science research in the past decade has shown definitively that children's experiences during their first years of life set the groundwork for their future success. In the first few years of life, 700 to 1,000 new neural connections form every second.⁶ As the Harvard University Center on the Developing Child explains, "The brain has the most plasticity, or capacity for change, during this time, which means it is a period of both great opportunity and vulnerability. The impact of experiences on brain

development is greatest during these years—for better or for worse. It is easier and less costly to form strong brain circuits during the early years than it is to intervene or ‘fix’ them later.” Children who do not receive the specialized support they need as infants and toddlers have a much harder time making up lost ground later.⁷ They don’t just struggle to catch up on skills that are typically considered cognitive, such as reading or speaking. They also struggle to develop physical skills, social skills, and the ability to regulate their emotions and behavior. Early childhood brain development sets the foundation for later functioning in all areas.

When young children do receive the supports they need, the payoffs are enormous. Research on early intervention programs shows that they produce “long-lasting and substantial gains in outcomes such as special education placement[,] grade retention, high school graduation rates, labor market outcomes, social welfare program use, and crime.”⁸ RAND estimates that well-designed early childhood interventions generate a return to society ranging from \$1.80 to \$17.07 for every dollar spent.⁹ There is no smarter place for us to invest resources than in infants and toddlers.

The proposed Enhanced Special Education Services Act does just that, expanding DC’s criteria for early intervention eligibility so that many more infants and toddlers will receive the help they need when it will be most effective. DC’s eligibility criteria for early intervention are currently narrower than those of at least 32 other states.¹⁰ This remains the case even after the eligibility expansion that took effect in July 2013. That

expansion changed the eligibility criteria from including only children with a 50% delay in one area to also make eligible children who have 25% delays in two or more areas. The expansion nonetheless left out a large number of children who would benefit substantially from early intervention services. Given DC's high incidence of risk factors for disability, including a nearly 30% child poverty rate¹¹ and a disproportionate number of babies with low birth weights¹² and preterm births,¹³ DC should make early intervention services available at least as widely as the majority of states do, if not even more widely.

The recent experience of one of our clients, who I will call Sarah, illustrates the urgency of further expanding the early intervention eligibility criteria.¹⁴ When Sarah was a toddler, her parents were worried because she was slow to learn to talk. Her frustration at being unable to communicate verbally had a serious impact, causing her to act out by banging her head against the wall and having hour-long tantrums. When Sarah was 25 months old, an evaluation showed that she was 28% delayed in her speech. That was not enough for her to qualify for early intervention services. On the evaluator's recommendation, her parents are attempting to secure speech therapy for her through their health insurance, but they have not been able to find a provider who can deliver in-home therapy. The providers they have found would require her to travel an hour each way to an office across town, which is a significant hardship because the Medicaid transportation that the family relies on requires them to be ready two hours in

advance of the appointment time and makes them wait up to two hours after the appointment ends to be picked up. This means that Sarah's parents have to spend up to five hours of their day to take her to a one-hour appointment. Sarah's speech therapist also has told her family that it would be easier for her to master new skills if she could learn them at home, in her natural environment, rather than in the office.

If Sarah lived in Maryland or Virginia, she would have qualified for early intervention and already be receiving in-home speech therapy. That would also be the case if she lived in a number of other states, including Alabama, Arkansas, Colorado, Indiana, Iowa, Kansas, Michigan, New Mexico, Pennsylvania, Texas, Washington, and Wisconsin.¹⁵ Our infants and toddlers shouldn't be deprived of necessary services just because they live in DC. I urge the Committee to support the Enhanced Special Education Services Act to ensure that future DC children like Sarah receive the help they need when they need it.

Evaluation Timeline

Much as DC infants and toddlers must wait until their delays have worsened before they can receive early intervention, all DC students must currently wait up to four months to be evaluated to determine whether they have a disability.¹⁶ This is longer than students have to wait in any other state in the country. Most states use the federal default timeline of 60 days,¹⁷ and some actually set timelines that are even shorter.¹⁸ Conducting an evaluation typically takes from several hours to two days, depending on

the type of evaluation, so 60 days should be more than enough time for an evaluation to be scheduled and completed.

DC's extremely long evaluation timeline has concrete harmful consequences for students. A student referred for evaluation in September may not have a completed evaluation until the following January. It often takes another month or two for the IEP team to meet to determine eligibility and develop an IEP, leaving the child without necessary services from September until March – the majority of a school year. This sets up children to fall behind and to fail.

A client of ours, who I'll call Ava, experienced just this. Ava was struggling academically and behaviorally in kindergarten. Her pediatrician suggested that her mother request a special education evaluation. When her mother did so, in spring 2013, the school responded that it was too late into the school year and she would have to wait until the next school year to re-request the evaluation. The school finally agreed to start the evaluation process in fall 2013. However, the school took the full 120 days to complete the evaluation. As a result, the evaluations were only completed in February 2014. At that point, much of Ava's first grade year had already passed. She has now almost a full year behind in reading. As a result, she is often frustrated with her classwork. She has been subjected to bullying because of her academic difficulties and she has begun exhibiting symptoms of anxiety and depression.

When she testified earlier, Ms. Johnson reported a similar experience with her son, Ryan. At four years old, he has fallen farther behind in his speech because of the delay in completing his evaluations. Ava and Ryan cannot get back the time they have lost. However, we now have the chance to make sure that future children will be evaluated promptly so that they can receive the supports they need when those supports will be most effective. I therefore urge the committee to support the provision of the proposed Enhanced Special Education Services Act that brings DC's evaluation timeline in line with the majority of other states by lowering it to the federal default of 60 days.

I understand that some concerns have been raised about whether DC would be able to comply with such a timeline. I am confident that it is possible. The most recent data reported publicly shows that DC is completing evaluations within 120 days 92% of the time.¹⁹ While this is not perfect, it shows that DC has the basic infrastructure in place to complete these evaluations. Shortening the timeline may require some additional resources for schools, but any necessary investment should more than pay for itself. When children like Ava and Ryan get the support they need more quickly, they will be more likely to be able to stay in classrooms with their general education peers and catch up to grade level.

Giving Parents Copies of Important Documents

Once a child has been found eligible for special education, the next step is to determine what supports the child needs in school. This determination is made by a team that includes the parent, teacher, psychologist, and other relevant school staff. In making the determination, the team reviews a number of documents, including any evaluations that have been completed and the proposed Individualized Education Program (IEP). These documents tend to be long and technical. While school staff have the opportunity to review them before the meeting, parents are often presented with them for the first time at the meeting. We have heard from many parents that they find this very difficult. They would like to receive the documents ahead of time so that they can review them in advance and then come prepared to ask any questions they might have. Parents would also like to receive final copies of the IEP soon after the meeting so that they have confirmation of what the team decided. In too many cases, parents report that they have to call and call for weeks after a meeting before the school will send them a copy.

To ensure that parents can be full participants in the IEP team, the Special Education Student Rights Act gives parents the right to receive copies of draft IEPs and evaluations at least a week before a meeting. It also gives parents the right to receive final copies of IEPs within a week after a meeting. These provisions are modeled on current laws in Maryland, New Jersey, and Connecticut.²⁰ We understand from Maryland advocates that the Maryland law has been very successful. They report that

IEP meetings are now more efficient because parents don't have to spend time reading the documents for the first time.²¹ In CLC's representation of children attending Maryland public schools, we have also found that when parents receive copies of these documents promptly they are better able to participate in decisions about their children's education.

Notice of School Assignment

After the IEP team has identified the kinds of supports that a student needs, the next step is to determine what specific school will be able to provide those supports for the student. In our experience, school staff too often make that decision without including the parent at all. Sometimes they even refuse to tell the parent the name of the school that they propose. For example, a client of ours who I'll call Michelle is attending a nonpublic school, but DCPS has told her that she will have to leave the school next year. DCPS has told her that she will have to attend a public school, but they have not told her which specific school they propose for her. Without this information, Michelle and her grandmother cannot assess whether the school is equipped to meet her needs. Not knowing what school is proposed for Michelle has caused her anxiety that has distracted her from focusing on her schoolwork, and it has undermined her grandmother's trust in DCPS.

While parents arguably do not have the right to insist on a particular school location as between multiple locations that are very similar, in most cases there are real

differences between different school locations. To make sure that parents can have input into the decision about school assignment, the Special Education Student Rights Act requires schools to inform parents about the specific school assignment proposed. I urge the committee to support this provision of the bill.

Classroom Observations

Once the child has been assigned to a school and started attending, parents often want to observe the classroom in action to see how the child is adjusting. In our experience, firsthand observations are vital for a number of reasons. They allow parents to assess how their child is responding to the instruction, how their child is interacting with peers, and what the classroom environment is like. In some cases, parents need to ask someone else to observe on their behalf, typically because the parent has a disability or a limited command of English. Parents also often need to ask someone else to observe on their behalf when the child's disability is so complex that it is beyond the ability of a layperson to assess whether the instruction they are receiving is appropriate.

The story of a client of ours who I'll call Jamila is a good illustration of the importance of classroom observations. Jamila is a middle school student with intellectual disabilities. This fall, she often came home crying because, she said, other children were being mean to her. Her community support worker asked to observe her in class in order to help her resolve these peer conflicts, but the school would not allow the community support worker to observe her. The school also refused to allow her

guardian *ad litem* (GAL) to observe her. The school would allow her grandmother (who was also her kinship foster parent) to observe her in class, but her grandmother is disabled and caring for several other children so she was not able to do the observation. Ultimately, the GAL had to appeal to the Family Court to order the school to allow her to observe Jamila's classroom. When she finally did the observation, she found that Jamila was misperceiving other students' actions as taunting and derogatory and was overreacting in response. Jamila's team was able to use the information the GAL gained to have her social emotional goals changed to address social skills and to have her placement changed to a self-contained classroom where she is doing wonderfully and has already made two friends.

You will also hear later today from another client of ours, Ms. Leach, who is the guardian of her granddaughter. She was concerned because her granddaughter was in high school but could only read books on an elementary school level. Ms. Leach asked the school if she could have an educational expert observe her granddaughter in class. The school refused to allow that. They gave her permission to observe herself, but Ms. Leach was not able to because she had had a stroke and was not confident in her ability to understand what was happening in the classroom. When she finally was able to have her granddaughter evaluated, she learned that the classroom her granddaughter was in was completely inappropriate for her.

During the past two school years, my office has documented many occasions when DC schools have refused to allow observations or put extremely restrictive conditions on them. We hear from other advocacy groups that the parents they represent have also often been prohibited from observing their children in class or from having others observe on their behalf. I urge the committee to support the Student Rights Act in order to put an end to this practice. Parents should be able to observe their children in school and have others observe on their behalf when necessary.²²

We understand that some concerns have been raised about protecting the privacy of other students in the classroom. We certainly agree that it is important to protect students' privacy, but we do not believe this legislation would compromise it in any way. Only parents and people who have written permission from parents would be allowed to conduct observations. There are already a number of different categories of people who are routinely allowed to observe classrooms, including prospective parents deciding whether to apply to a school, parents serving as volunteers, school staff assessing teachers, and evaluators conducting evaluations of students. I do not see how allowing current parents and their designees to conduct observations would raise any additional concerns.

In conversations with parent advocates in Massachusetts and Delaware, two of the states that have observation laws similar to those proposed, we learned that both laws have been very effective at enhancing parents' participation in decision making.

Our Delaware contact said that the ability to send in designees was especially helpful for single parents, who might not be able to miss work to conduct the observation themselves.²³ Our Massachusetts contact said that they found that allowing parents and their designees to do observations greatly increased parents' trust in the school.²⁴ When we spoke with representatives of local nonpublic schools, we heard very similar feedback. We understand that the local nonpublics routinely allow parents and their designees to complete observations, and often find their feedback afterwards very helpful. DC charter school representatives similarly told us that they routinely allowed observations without any problems.

Requiring All Charter Schools to Take Responsibility for their Students with Disabilities

Nearly half of all DC students attend charter schools. Overall, the proportion of charter school students who have disabilities is similar to the proportion of DCPS students who do.²⁵ But there is a major difference between the two sectors in their legal framework for delivering special education services, and that difference works to the detriment of some charter school students. DC law currently allows charter schools to choose to have DCPS take responsibility for their provision of special education services to their students.²⁶ This is illogical. For these schools (which are typically referred to as DCPS-dependent charters), DCPS is responsible for ensuring that they comply with special education law, but DCPS has no power over their budgetary or staffing

decisions. The impact on students is that no one takes full responsibility for ensuring that their needs are met. Typically, both DCPS and the DCPS-dependent charter blame each other when problems arise.

The example of a client of ours, who I'll call Maria, illustrates the problem. Maria is a 7th grader with a severe learning disability who attended a DCPS-dependent charter school. The charter school refused to provide her with anything but inclusion services even though it was clear that she needed more help. DCPS, despite being legally responsible for her special education, did not send a representative to attend her IEP meetings. Ultimately, Maria's mother had to work with a Children's Law Center attorney to file a due process complaint to force the school to provide pull-out services for Maria. Even after the complaint was filed, DCPS refused to take responsibility for the charter school's legal violations and made the argument that Maria should just enroll in her DCPS neighborhood school because the charter was not required to try to meet her needs. Because of DCPS's and the charter school's actions, Maria was not able to continue attending the charter school that she and her parents had chosen. She fell further behind academically without pull-out services and ultimately she had to abandon her friends and the school staff that she knew in the middle of the school year.

You also heard a similar story from Ms. Murphy. Her daughter Jashé's charter school refused to provide her with more than two hours of special education support per day, even though she was four years below grade level. Ms. Murphy also ultimately

had to move her daughter to a DCPS school so that she could receive appropriate special education services, but at the cost of giving up the small classes and nurturing environment that her charter school had provided.

School choice is not meaningful for children like Maria and Jashé. They and their parents choose charter schools for the same reasons that other parents do – because their child is interested in a particular curriculum, because they like the atmosphere at a school, or because they are seeking a stronger alternative to a struggling neighborhood school. But simply because they have disabilities, the schools they have chosen can refuse to educate them and force them to return to their neighborhood school. I urge the committee to end this discrimination by supporting the Special Education Quality Improvement Act, which requires all charter schools to take full responsibility for their students with disabilities.

Expanding Charter Schools' Capacity

I do recognize that charter schools face unique challenges in developing a full continuum of special education services. Even the largest charter school operators are far smaller than DCPS. They lack the economy of scale that a traditional school system has. In our discussions with charter schools, one observation we heard repeatedly is that the schools struggle to bring in enough students to fill specialized classrooms or use specialized services. Limited by the DC law that allows them only to admit students through a blind lottery, they have no way to predict how many students with different

kinds of special needs they will have from year to year.²⁷ For example, Bridges Public Charter School is a well-regarded school that focuses on serving elementary school students in an inclusion environment. They are known for providing excellent special education. Despite this, they report that they struggle to fill the seats they have designated for students with disabilities. We know this is not for lack of need. With the blind lottery system, there is no way to make sure that the slots at Bridges go to the students who would most benefit from them. Similarly, several other charter schools have stated that they would like to develop more specialized programs but are reluctant to invest the funds and time to get them off the ground when they have no way of knowing if the programs will match the needs of the children ultimately admitted through the lottery.

To allow charter schools to build capacity that will not go to waste, the Special Education Quality Improvement Act allows charter schools to offer an admissions preference to students with disabilities. It is similar to a bill that was introduced last summer at the request of the Mayor, the Increasing Access to High Quality Educational Opportunities Act of 2013, but it has additional protections built in to limit any unintended consequences of students being segregated into a subset of schools. We encourage the committee to support this provision to expand the capacity of the charter schools to serve students with special needs. We expect that it will lead to fewer

nonpublic placements as more charter schools develop robust programs that match the quality and intensity of the nonpublic schools.

Expanding Capacity in the Public Education System

The single largest problem facing DC's special education system is the lack of capacity in the public schools. All too often, the discussion about special education in DC focuses on the high cost of tuition for students in nonpublic special education schools. This focus on costs ignores the cause of the problem. DC has so many students in nonpublic placements out of state because we do not have schools and programs that can serve them locally. We agree that, all things being equal, children should be educated close to home. But in this case all things are not equal: many of the local schools do not offer the specialized supports necessary to educate children with complex disabilities. If DC is to succeed in significantly increasing the number of students with disabilities that can attend their local schools, it must develop specialized and well-resourced special education programs at those schools.

To develop strong programs, we need to spend our money wisely. In recent years, both the Fenty and Gray administrations have made unwise choices about special education funding. Both administrations focused on removing students from nonpublic schools as a cost-saving measure. Rather than reinvesting the savings from reduced nonpublic tuition into the public school system, the money saved was put into a wide array of projects that have nothing to do with education. They ranged from renting

bleachers at Southwest Waterfront stadium to funding the Lincoln theater. This diversion of funding did nothing to support strong public education programs.

The Special Education Quality Improvement Act includes a number of provisions to ensure that DC will instead spend money in ways that will strengthen our public special education system. First, it requires all money saved on nonpublic tuition each year to be put into an Enhancement Fund. (DC can also appropriate additional funding into the Enhancement Fund, on top of the nonpublic savings.) Second, it directs DC to use the Enhancement Fund to support specific programs that are targeted at quickly and effectively improving special education in the public schools. These programs include partnerships between public schools and nonpublic schools to share expertise and partnerships between public charter schools to pool resources. Some of these partnerships have already had success through pilot projects.²⁸ I urge the committee to support these provisions of the bill.

Earlier Transition Planning

As I have often stated in testimony before this committee, I have serious concerns about the ability of DC schools to prepare students with disabilities for adulthood. Students with disabilities are at high risk of failing to graduate from high school and not being able to support themselves as adults.²⁹ To address this, federal special education requires schools to provide special education students between 16 and 22 with “transition services” to help them transition successfully to adulthood.³⁰ These

services are personalized to meet each student's needs and can include a wide range of activities to prepare students for independent living, employment, and further education.

When transition planning is done well, it can be extremely effective at keeping high school students engaged in school and putting them on a path to success. Take the example of a client I'll call David.³¹ David is a 16-year-old with learning disabilities. His school started his transition planning when he was in 9th grade, even though the law does not currently require it to start that early. His case manager identified internships for him and connected him to a program that provided him with a medical fellowship for the summer. Knowing that he has a path toward a career is helping him to stay on track in school. He plans to go to college. If his school hadn't started his transition planning in ninth grade, he could easily have gone off track then: without a goal to work towards, he would likely have been less engaged in school and had more difficulties with his behavior.

In contrast with David's success, you heard earlier from Mr. Macedo about his struggle to obtain appropriate transition services for his younger brother, Marco, who has an intellectual delay and needed help mastering basic independent living skills. Because he did not receive appropriate transition planning or services, he failed to make progress during his teenage years. While he is now finally receiving the supports he

needs, he would be farther ahead now if he had not had to wait so long. Sadly, most of our clients' experiences more closely resemble Marco's than David's.

To make sure that all DC students are able to benefit from transition planning the way that David has, I urge the committee to support the provision of the Enhanced Special Education Services Act that lowers the age for starting transition planning to 14. In our conversations with parents and advocacy groups, this was one of the most repeated recommendations. There is broad agreement in the special education community that transition planning needs to start earlier than 16 in order for it to be effective. By 16, many students with disabilities have already become disengaged because they cannot see how their schoolwork will help them reach their future goals. Making that connection clear will keep teenagers on track.

About a quarter of states start transition planning for their students when they reach the age of 14.³² We spoke with advocates in Maryland and Massachusetts, two of these states, and heard that they have found the earlier transition age very helpful. The Maryland transition age of 14 has been in effect since 2004 and has been uniformly welcomed.³³ The advocates we spoke to in Massachusetts emphasized that the lower age does not mean that the state spends more money on transition, but instead that it spends the same amount of money more wisely. They also find that starting transition planning at age 14 aligns well with the middle school to high school transition.³⁴

I understand that concern has been raised about whether lowering DC's transition age would lead to even worse ratings on the federal Department of Education's secondary transition compliance indicator. If anything, lowering DC's transition age should lead to higher scores on the compliance indicator for secondary transition because that indicator measures the "percent of youth with IEPs *aged 16 and above* with an IEP that includes appropriate measurable postsecondary goals" (emphasis added).³⁵ That indicator will not be changed as a result of DC changing the transition age. The indicator was set by the federal Office of Special Education Programs after the IDEA was reauthorized in 2004 and is the same for all states in the nation, including the states that have already lowered their transition planning age to 14.³⁶ If DC starts transition planning at age 14, then many more students should have appropriate transition plans in place by the time they reach age 16, and DC's performance on the indicator should improve.

Evaluations for Adult Disability Services

Many students in special education need support from adult disability services after they leave high school. A number of agencies in DC provide such services, including the Department on Disability Services (DDS), Rehabilitation Services Administration (RSA), and Department of Behavioral Health (DBH). The services they provide include job training, independent living skills, mental health support, and funding for higher education. To qualify for such services from these agencies, students

must have recent evaluations documenting their disabilities and their need for support. We find that too many students leave school without these necessary evaluations. This causes a gap in connecting them to adult disability services. This gap is a time when too many young adults fall through the cracks, giving up on pursuing employment or higher education because the first response they hear from the adult-serving agency is that they are not eligible.

The Enhanced Special Education Services Act ensures that these students will receive the evaluations that they need while they are still in high school. It requires each student's IEP team to determine whether he or she needs additional evaluations to qualify for adult services. If the team determines that additional evaluations are needed, then the team must develop a plan for them to be completed. The provision does not change who is responsible for actually completing the evaluations. In some cases, the school may be responsible for completing the evaluation because of its connection to the student's educational needs, but in other cases the evaluation should be funded by the adult disability agency or by the student's health insurance.

I urge the committee to support this provision. It will lead to better outcomes for students leaving special education. More students will receive the vocational training, further education, and independent living support that they need if their schools make sure that the students have the evaluations they need to establish their eligibility for these services. This will likely also improve DC's performance on other of the federal

special education compliance indicators (indicator 14, which measures how many students are enrolled in higher education or competitively employed within one year of leaving high school). More importantly, it will also benefit DC as a whole, as more of our youth grow up to be independent and productive adults.

Flexible Educational Decision-Making for Adult Students

While general education students typically graduate from high school by age 18, students in special education have the right to remain in school until the end of the semester in which they turn 22. This means that there are a number of special education students who are technically adults. Under DC law, when they turn 18, students obtain the right to make decisions for themselves about their special education.³⁷ For most students, this is an appropriate step toward independence. However, for a subset of students, this is more responsibility than they are capable of handling.

Under current law, the only option that parents and students have if they believe that an adult student is not ready to make his or her own educational decisions is to petition the DC court to have the parent appointed as the child's guardian. This is a complicated process, and it is one that disability rights advocates uniformly counsel against because it imposes such severe limitations on an individual's autonomy. Guardianships often limit rights in a variety of areas, ranging from financial decisions to decisions about where to live or what medical care to receive. We have heard from a

number of advocates and parents that DC needs to develop a middle ground between guardianship and requiring all adult students to make their own educational decisions.

The Special Education Student Rights Act and the Enhanced Special Education Services Act together propose a continuum of decision-making that is much more attuned to the realities of student's lives. Under these bills, students and parents would be able to choose from a spectrum of options. For students who had the capacity to execute a power of attorney form, they could assign their decision-making rights to their parent or another person of their choice. (While DC law already allows for powers of attorney, we believe that clarifying that they can be used in this particular instance is necessary to avoid confusion.) For students who lack the capacity to execute a power of attorney, their parent could initiate a process to be appointed to act on their behalf if two experts agreed that it was appropriate. I understand that advocates have suggested that the bills be amended to include several additional points on the continuum of decision-making: allowing students to choose to make decisions jointly with their parents and allowing students to use supported decision-making, in which a person of their choice would help them make decisions. I believe those proposals will strengthen the bills and look forward to working with advocates and the committee to refine the legislative language.

Similar provisions have been successful in a number of other states. The IDEA, through its Special Rule, specifically allows states to develop mechanisms for allowing

parents to retain decision-making rights for students whose disabilities are so severe that they cannot make informed decisions.³⁸ Over a dozen states have so far implemented the Special Rule, including Virginia, Florida, Indiana, North Carolina, and Oregon.³⁹ A number of other states have developed other creative approaches. Notably, Massachusetts allows students to delegate their educational decision-making rights to an adult of their choice or to share them with a parent or other willing adult.⁴⁰ In both states, a number of due process protections for students are built into the models. I understand that advocates in these states find the models successful.

Notice of Sources of Assistance

The special education process is complex. Even for new lawyers in my office, it can take months for them to master the many nuances of the IDEA's requirements. DC's procedural safeguards handbook for parents is a dense 37 pages.⁴¹ Deciphering all of their rights can be very difficult for parents, especially because they typically must learn about special education at a time when their children are in crisis. Many DC parents also have limited command of English or low literacy. Additionally, many DC parents are living with the stress of being at or below the poverty line, holding multiple jobs and struggling to make ends meet. But the challenges of understanding special education rights don't just apply to low-income parents. I have also heard from well-educated, well-off parents that they find the process incredibly difficult to understand.

One simple but powerful step that these bills take to help parents understand the special education process is requiring schools to give parents notice of sources of assistance whenever they give parents prior written notice of a proposed evaluation, change in services, or change in placement. I urge the committee to support this provision of the Special Education Student Rights Act. I have heard from many parents that they did not know where to turn for help when they first encountered problems with their children's education. We often think of parents seeking legal representation to address a school's egregious failures, but many parents simply need help understanding what an IEP says or figuring out how to word a request for additional evaluations. If they can get the help they need at that stage, before a problem has developed, then it is less likely that they will need to take formal legal action against a school later. Everyone wins when parents have the information they need to partner with schools to make sure their students are receiving all the supports they need.

Ombudsman's Role in Identifying School-Level Concerns

The ombudsman for public education is another important resource for parents who have concerns about their children's education. In our experience with the ombudsman's office when it first existed several years ago, we found that the office was often able to resolve parents' concerns before they escalated to the point where the parent felt compelled to take formal legal action. In the short tenure of the new

ombudsman, we have already found that she has been able to resolve a number of issues that might have required litigation without her involvement.

The ombudsman also plays the important role of identifying and reporting on systemic problems. Because the ombudsman interacts with so many parents from all parts of the city, she is ideally positioned to track trends and bring them to the attention of policymakers. This is an especially important function in DC because the oversight of our education system is so disjointed, with the Office of the State Superintendent for Education, the Public Charter School Board, and the Deputy Mayor for Education all overseeing different aspects of the system and not always communicating well with each other. In order to ensure that the ombudsman has the authority she needs to fulfill her important role of elevating parental concerns to policymakers' attention, the Special Education Quality Improvement Act clarifies that her mandate includes identifying school-level concerns and observing instruction as needed. I urge the committee to support these provisions so that the ombudsman's office can fulfill its critical role.

Moving Due Process Hearings to the Office of Administrative Hearings

Because of DC's unusual organization as a federal district, DC must act as both a state and a local school district for special education purposes. The Office of the State Superintendent of Education is responsible for overseeing the provision of special education services throughout DC and reporting to the federal government. It is helpful to think of OSSE as the equivalent of the Maryland State Department of Education.

Within DC, DCPS and many of the charter schools act as Local Education Agencies (LEAs), which means that they are responsible for providing special education to the students they serve. If OSSE is the equivalent of the Maryland State Department of Education, they are the equivalent of the country public school districts (e.g., Prince George's County Public Schools). However, in addition to its oversight responsibilities, OSSE also has responsibilities for providing direct services that state-level agencies in other states do not have. Notably, OSSE directly provides special education transportation and early intervention services for DC students. OSSE is also responsible for approving and funding nonpublic placements for students coming from all of DC's public schools. In other states, these sorts of services are provided at the county level.

This unusual structure causes a serious problem when it comes to ensuring fair hearings for parents who believe that their children are not receiving appropriate special education. In DC, these hearings – called due process hearings – are conducted by contractors who are chosen and paid by OSSE. There is an inevitable appearance of bias when these OSSE-contracted hearing officers are called on to make decisions about whether OSSE has violated the law.

Many of the parents and attorneys we spoke to reported that some of the OSSE-contracted hearing officers acted in ways that seemed biased against parents. For example, attorneys reported that hearing officers often allow school district lawyers to file non-responsive answers to complaints. Hearing officers very rarely will decide a

Motion to Dismiss or Motion for Summary Judgment in a parent's favor, no matter how strong the evidence. In a recent case, a hearing officer went so far as to rule to exclude evidence that the parent had properly provided to the school's lawyer in advance of the hearing because the attorney for the school had not made time to review it with a representative of the school. In many ways, parents are frequently held to a higher standard than schools are in the hearing process.

To remedy these concerns about perceived and actual bias, the Special Education Student Rights Act requires OSSE to enter into an agreement with DC's Office of Administrative Hearings (OAH) for OAH to conduct due process hearings on OSSE's behalf. I urge the committee to support this provision. OAH currently conducts hearings for a wide array of DC agencies. In particular, OAH conducts school discipline hearings for DCPS. Our attorneys report that the school discipline hearings are, by and large, conducted fairly and efficiently. A number of other states also use their OAH to conduct special education hearings, including California, Maryland, Washington, North Carolina, Florida, and Hawaii.

Shifting Burden of Proof to School Districts Regarding Placements

In due process hearings, one of the parties must bear what is called the "burden of proof." In order to win a hearing, the party that bears the burden of proof must show that the preponderance of the evidence supports their position. Typically, the burden of proof is divided into the burden of production (i.e., providing evidence) and the burden

of persuasion (i.e., convincing the hearing officer that the evidence supports the party's position). While the question of which party bears the burden of proof can seem like a legal technicality, it actually has a real impact on whether parents truly have access to justice.

The rule in DC right now is that the party that files the complaint bears the burden of proof. In nearly all cases, that party is the parent. This is problematic because parents are at a disadvantage in many ways in the dispute resolution process. They have much less access to information than schools do, as schools are able to observe students throughout the school day and have control of all of their records. In contrast, parents are lucky to be allowed to observe their children at all, and parents often struggle to force schools to provide them with copies of their children's records. Schools also have experts in education and psychology on staff, whereas parents must retain such experts at great cost. This imbalance in access to information and expertise is compounded by the fact that a great many DC parents are low-income, speak limited English, or have low literacy.

To remedy this imbalance, the Special Education Student Rights Act moves the burden of proof onto the school system for one particular subset of claims: claims about the appropriateness of a student's educational placement. I strongly urge the committee to support this provision. It represents a compromise between maintaining the status quo and fully shifting the burden of proof to the school system for all claims. It

recognizes that parents are more likely to have access to adequate information when it comes to procedural claims (e.g., claims alleging that an evaluation was conducted late or the correct team members were not present at an IEP meeting). It focuses on the main area where parents often do not have access to adequate information – the highly-technical decision about what specific services a child needs and what school environment is appropriate. Whereas parents struggle to obtain enough information about what is happening in a classroom to prove that the placement is not appropriate, schools should easily be able to provide enough evidence to show that a placement is appropriate. If an LEA has developed an IEP and placement that it believes is adequate to provide a child with educational benefit, it should not be difficult for the LEA to present evidence in a hearing showing that the IEP and placement are in fact adequate.

DC actually originally placed the burden of proof on the LEA. In 2006, when DC amended its regulations to shift the burden to the party seeking relief, the purpose given for the shift was curbing “attorney abuses” such as filing complaints regarding minor technicalities, refusing to cooperate in meetings, and refusing to make the student available for evaluation. A 2007 report by DC Appleseed examined hearing officer decisions from before and after the shift.⁴² The Appleseed report found that the shift had no effect on attorney abuses (which were minimal both before and after the shift), but it had the significant effect of substantially reducing the number of complaints resolved through settlement. The report concludes: “It seems to us that the

shift has had little effect on what OGC [the DCPS Office of General Counsel] saw as attorney abuses, but has had an adverse effect on parents' ability to secure FAPE [free appropriate public education], particularly in light of other factors such as the fee cap, non-reimbursable expert expenses, and access to records. We assume that the parents of disadvantaged children are the most seriously prejudiced."

In addition to the assurances from the Appleseed report that frivolous complaints are extremely rare, any concerns about frivolous complaints should be allayed by the fact that if a parents' attorney were to file a frivolous claim, the LEA could seek attorney's fees from that attorney and parent.⁴³ Back in 2006 when the burden was moved to the moving party, the section of the IDEA that allows LEAs to seek attorney's fees from parents was very new and likely had not often been used.⁴⁴ Now that it is well established, it acts as a real deterrent to parents and parents' attorneys filing frivolous claims.

We spoke to parent advocates in a number of the states that place the burden of proof on the school system, including Connecticut, Delaware, New York, and New Jersey. The advocates in those states told us that school districts are more open to settling cases as a result.⁴⁵ When the burden is on the parent, school districts have little incentive to settle. They have lawyers on staff, so they do not have the concern about paying attorney's fees that a parent would have. There is no reason for them not gamble

on the possibility that the parent may put on a poor case even if the school district has no evidence at all to support its position.

Given all of the arguments in favor of moving the burden of proof to school districts to defend the appropriateness of the placements they propose, I strongly urge the committee to support this provision of the law. It will have the substantial and immediate impact of leveling the playing field for parents, especially for low-income parents.

Allowing Prevailing Parents Reimbursement for Expert Witness Fees

As discussed above, the claims raised in due process hearings are often quite sophisticated. Parents only have a reasonable hope of prevailing in hearings about the appropriateness of an evaluation, IEP, or placement if they can offer expert witness testimony. This presents an often-insurmountable challenge for low-income parents who cannot afford expert fees. The fees charged by experts are typically over \$150 per hour for each hour of preparation, transportation, waiting time, and testimony. At Children's Law Center, we have been lucky to work with experts who are willing to make some reductions to their fees because we are a nonprofit, but expert fees still represent a large cost even for us. And we are not able to represent many of the large number of clients who seek free special education representation. For the parents that we and other nonprofits must turn away, they are often not able to find an attorney

willing to take their case on a contingency basis unless the parent can afford the cost of the expert witness fees necessary to have a reasonable hope of winning the case.

The Special Education Student Rights Act removes this burden on low-income parents by requiring school districts to reimburse prevailing parents for their reasonable expert witness fees. This provision is modeled on laws in Delaware and New Hampshire. The parent advocates we spoke to in Delaware reported that their law had the strong support of their Lieutenant Governor and their State Council for Persons with Disabilities. It has had the effect of increasing access to justice for low-income parents, which in turn means that it has increased access to education for low-income students.⁴⁶ DC should follow this lead so that whether students can receive an appropriate education is not a function of their parents' incomes.

Conclusion

Thank you for the opportunity to testify, Mr. Chairman, and I welcome any questions.

¹Children's Law Center works to give every child in the District of Columbia a solid foundation of family, health and education. We are the largest provider of free legal services in the District and the only to focus on children's comprehensive needs. Our 90-person staff partners with local pro bono attorneys to serve more than 5,000 at-risk children and their families each year. We use this expertise to advocate for changes in the District's laws, policies and programs. Learn more at www.childrenslawcenter.org.

²65% of students with IEPs failed to graduate with a diploma with their cohort in school year 2012-2013. Of those students who failed to obtain a high school diploma, 13% did obtain a certificate of IEP completion. Office of the State Superintendent of Education, FY13 Oversight Questions, Attachment: Q70 IEP Graduates.

³ On the 2013 DC CAS, 75.9% of students in special education scored at Basic or Below Basic in math. OSSE, "2013 DC Comprehensive Assessment System Results," available at

<http://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/OSSE%20Presentation%202013%20DC%20CAS%20Results%20%28Statewide%29.pdf>.

⁴ On the 2013 DC CAS, 80.7% of students in special education scored at Basic or Below Basic in reading. OSSE, “2013 DC Comprehensive Assessment System Results,” available at

<http://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/OSSE%20Presentation%202013%20DC%20CAS%20Results%20%28Statewide%29.pdf>.

⁵ OSSE reports that 12,844 DC students are in special education. An additional 580 infants and toddlers receive services through IDEA Part C. Office of the State Superintendent of Education, FY13 Oversight Questions, Attachment: Q69 IEP Student Information, and Q53.

⁶ Center on the Developing Child, Harvard University, “Key Concepts: Brain Architecture,” http://developingchild.harvard.edu/key_concepts/brain_architecture/.

⁷ See, e.g., Zero to Three Policy Center, “Improving Part C Early Intervention: Using What We Know about Infants and Toddlers with Disabilities to Reauthorize Part C of IDEA,” Jack Shonkoff et al, Feb. 2003; Robert Wood Johnson Foundation, “Early Childhood Experiences: Laying the Foundation for Health Across a Lifetime,” March 2011.

⁸ RAND Corporation, “Proven Benefits of Early Childhood Interventions,” available at http://www.rand.org/pubs/research_briefs/RB9145/index1.html.

⁹ RAND Corporation, “Proven Benefits of Early Childhood Interventions,” available at http://www.rand.org/pubs/research_briefs/RB9145/index1.html.

¹⁰ Early Childhood Technical Assistance Center, “Summary Table of States’ and Territories’ Definitions of/Criteria for Part C Eligibility,” June 2012, available at http://www.nectac.org/~pdfs/topics/earlyid/partc_elig_table.pdf.

¹¹ As of 2012, 27% of DC children lived below the federal poverty line. The only states with higher child poverty rates were Arkansas, Louisiana, Mississippi, and New Mexico. Kids Count Data Center, “Children in Poverty (100 Percent Poverty),” available at <http://datacenter.kidscount.org/data/tables/43-children-in-poverty#detailed/2/2-52/false/868,867,133,38,35/any/321,322>.

¹² In 2012, 9.6% of babies born in DC had a low birth weight (defined as under 5.5 lbs). The only states with a higher percentage of babies born with low birth weights were Alabama, Louisiana, and Mississippi. Kids Count Data Center, “Low-birthweight babies,” available at <http://datacenter.kidscount.org/data/tables/5425-low-birthweight-babies?loc=1&loct=1#detailed/1/any/false/868,867,133,38,35/any/11984,11985>.

¹³ In 2012, 13% of babies born in DC were born preterm. The only states with a higher percentage of preterm births were Alabama and Florida. Kids Count Data Center, “Preterm births,” available at <http://datacenter.kidscount.org/data/tables/18-preterm-births?loc=1&loct=1#detailed/2/2-52/false/868,867,133,38,35/any/279,280>.

¹⁴ The names of our clients have been changed to protect their privacy. Unless otherwise noted, all other identifying details are unchanged.

¹⁵ Early Childhood Technical Assistance Center, “Summary Table of States’ and Territories’ Definitions of/Criteria for Part C Eligibility,” June 2012, available at http://www.nectac.org/~pdfs/topics/earlyid/partc_elig_table.pdf.

¹⁶ DC Code § 38-2561.02(a).

¹⁷ 20 U.S.C. § 1414(a)(1)(C).

¹⁸ “State Timelines for an Initial Evaluation under the IEDEA,” Felicia Hurewitz, Ph.D., 2007, available at <http://www.schoolmentalhealth.org/Resources/StateTimelinesIDEA.pdf>.

¹⁹ Office of the State Superintendent of Education, IDEA Part B Special Conditions Progress Report #2, Jan. 31, 2013, available at

<http://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/FFY%202012%20DC-B%20Special%20Conditions%20Report%20Number%202012%2001%2031%2013.pdf>, p. 4.

²⁰ Md. EDUCATION Code Ann. § 8-405, RSA Sec. 10-76d-13, N.J.A.C. 6A:14-3.5(a).

²¹ Telephone conversation with Selene Almazan, Co-Executive Director, Maryland Council for Inclusive Education, May 14, 2014.

²² Our position is that the federal law governing special education already guarantees parents the right to classroom observations as part of their right to participate meaningfully in decisions about their children’s education, but DCPS has consistently opposed this position. Therefore, we believe that this provision of the Student Rights Act is necessary to clarify the question for DC.

²³ Telephone conversation with Hazel Cole, Parent Advocate, Delaware Parent Information Center, May 21, 2014.

²⁴ Telephone conversation with Julia Landau, Senior Project Director, Disability Education Justice Initiative, Massachusetts Advocates for Children, May 28, 2014.

²⁵ 12% of DC public charter school students are in special education, as compared to 14% of DCPS students. DC Public Charter School Board, “Facts about DC Public Charter School Board and Charter Schools,” Oct. 2013, available at <http://www.dcpscb.org/data/files/fast%20facts%20-%20october%202013%5B1%5D.pdf>.

²⁶ DC Code § 38-1802.10 (“each public charter school shall elect to be treated as a local educational agency or a District of Columbia public school for the purpose of part B of [IDEA] and [Section 504]”) and DC Code § 38-1802.02 (“notwithstanding any other provision of law[,] the eligible chartering authority shall not have the authority to approve or disapprove such election”).

²⁷ DC Code § 38-1802.06 forbids charter schools from limiting enrollment on the basis of a student’s intellectual ability or status as a student with special needs.

²⁸ Through a consortium pilot with the DC Association for Special Education (DCASE), select DCPS schools and public charter schools have been able to access training and consultation services provided by experts from nonpublic schools. Last year, OSSE also began partnering with the Special Education Cooperative and Cross & Joftus, who joined DCASE in providing technical assistance and direct evaluation services to Local Education Agencies based on compliance data.

²⁹ See, e.g., National Education Association, “Preventing Future High School Dropouts,” Nov. 2008, available at <http://www.nea.org/assets/docs/HE/dropoutguide1108.pdf>, National Center for Learning Disabilities, “Diplomas at Risk: A Critical Look at the Graduation Rate of Students with Disabilities,” May 2013, available at <http://www.ncl.org/images/content/files/diplomas-at-risk/DiplomasatRisk.pdf>.

³⁰ 34 C.F.R. § 300.320(b)(2).

³¹ Some identifying details were changed in David’s story to protect his privacy.

³² Massachusetts Advocates for Children, “Fact Sheet – S. 286, An Act to Maintain Transition Age Requirements for Children with Disabilities,” available at <http://www.massadvocates.org/documents/S286Fact-sheet.pdf>. Until the 2004 reauthorization, IDEA required states to begin transition planning at age 14. The 2004 reauthorization allowed states to begin transition planning at age 16, but as with all IDEA requirements, states are allowed to extend additional rights to students if they so choose.

³³ Telephone conversation with Leslie Margolis, Managing Attorney, Maryland Disability Law Center, May 16, 2014.

³⁴ Telephone conversation with Julia Landau, Senior Project Director, Disability Education Justice Initiative, Massachusetts Advocates for Children, May 28, 2014.

³⁵ 20 U.S.C. § 1416(a)(3)(B)), 34 C.F.R. § 300.600.

³⁶ Note that the current state performance plan is for 2005-2012. OSSE is in the process of developing a new state performance plan, as are all other states.

³⁷ 5 DCMR § E3023.1.

³⁸ 20 USC § 1415(m)(2).

³⁹ See, e.g., 8 Va. Admin. Code § 20-81-180 (2014), Fla. Admin. Code Ann. r. 6A-6.03311 (1983), 511 Ind. Admin. Code 7-43 (2010), N.C. Gen. Stat. § 115C-109.2(b) (1987), Or. Rev. Stat. § 343.155(2)(d).

⁴⁰ 603 CMR § 28.07.

⁴¹ Office of the State Superintendent of Education, "District of Columbia Notice of Procedural Safeguards," Jan. 2011, available at <http://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/ProceduralSafeguardsPartB.pdf>.

⁴² DC Appleseed, Memorandum to Deputy Mayor Victor Reinoso *et al* re Burden of Proof in Special Education Due Process Hearings, Dec. 1, 2008. On file with Children's Law Center.

⁴³ 20 U.S.C. § 1415(i)(3)(B)(i)(II).

⁴⁴ The section was added in the 2004 reauthorization of the IDEA.

⁴⁵ Telephone conversation with Marissa Band, Staff Attorney, Community Legal Aid Society of Delaware, May 13, 2014. Telephone conversation with Mary Ciccone, Managing Attorney, Disability Rights New Jersey, May 16, 2014. Email correspondence with Cara Chambers, Director, Kathryn A. McDonald Education Advocacy Project, The Legal Aid Society of New York, June 10, 2014. Telephone conversation with Nancy Prescott, Executive Director, Connecticut Parent Advocacy Center, May 15, 2014.

⁴⁶ Telephone conversation with Marissa Band, Staff Attorney, Community Legal Aid Society of Delaware, May 13, 2014.